

**LEMON GROVE [CITY COUNCIL]
AGENDA ITEM SUMMARY**

Item No. 1.H
Mtg. Date April 4, 2017
Dept. Development Services

Item Title: Third Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust for 8084 Lemon Grove Way

Staff Contact: David De Vries, Development Services Director

Recommendation:

Adopt a resolution amending the Option Agreement to provide a third six month time extension.]

Item Summary:

In September 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is Lemon Grove Housing Authority owned land. The Purchase Option Agreement required SDCLT to complete certain milestones by specified dates. These milestones ensure that SDCLT has progressed towards the purchase of 8084 Lemon Grove Way. The fourth milestone—securing building and site improvement permits and securing, as to form, the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was to be completed by May 19, 2016 and the Second Option Amendment extended this date to April 19, 2017. The applicant is working with City staff and other agencies to achieve this milestone; however, they will be unable to meet the specified deadline. Also, the original letter of intent for construction financing has expired and three months is recommended to complete. City staff recommends that the City Council adopt a resolution amending the Option Agreement to provide a third time extension.

Fiscal Impact:

[None.]

Environmental Review:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. [Resolution Amending the Option Agreement
- C. Time Extension Request from SDCLT

Attachment A

LEMON GROVE [CITY COUNCIL] STAFF REPORT

Item No. 1.H

Mtg. Date April 4, 2017

Item Title: Third Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust for 8084 Lemon Grove Way

Staff Contact: David De Vries, Development Services Director

Discussion:

On September 22, 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is owned by the Lemon Grove Housing Authority (City Council Resolution No. 2014-3284 dated September 16, 2014). A nine unit housing development is currently entitled on the subject property based on approvals in 2007 and amendments approved on March 1, 2016. The Purchase Option Agreement allows SDCLT to purchase the property for one dollar in exchange for constructing the units and restricting them to moderate income households included in their 99-year ground lease mechanism. SDCLT is required to achieve certain milestones by specified dates. These milestones ensure that SDCLT has done their due diligence to determine whether the project is feasible.

The first milestone—submission of a business plan—was to be achieved by December 2014. The business plan was submitted on December 1, 2014 and the City Council reviewed the business plan and provided feedback to SDCLT on January 6, 2015.

The second milestone—securing entitlements and construction financing—was to be achieved by September 2, 2015 and October 19, 2015, respectively. Minimal revisions to the approved Tentative Map (TM0052) and Planned Development Permit (PDP06-09) were proposed and amendments to the floor and elevation plans were approved by the City Council on March 1, 2016. Entitlements for both the tentative map and planned development permit have been secured since there has been substantial progress towards the issuance of a final map, grading plan, improvement plan and building permits for the completion of the project. On September 4, 2015, SDCLT submitted a Letter of Intent (LOI) from Torrey Pines Bank that has been signed with the Bank required deposit providing conditional approval for construction financing from Torrey Pines Bank. The LOI has since expired and a new LOI with deposit will be provided by SDCLT to the City within three months (July 19, 2017 specified deadline extension).

The third milestone—submit building and site improvement applications—was to be achieved by April 4, 2016. This milestone requires submittal of development plans and technical studies required for a grading permit, building permit, landscape permit, and a final map. Appropriate plans and reports include building and site construction plans, grading plans, a landscape documentation package, an acoustical analysis, a Storm Water Quality Management Plan and a hydrology report, draft Conditions, Covenants, and Restrictions (CC&Rs), and potentially other necessary reports, studies, and plans in accordance with City Council Resolutions 2694 and 2695, which approved TM0052 and PDP06-09 respectively. A “Hold Harmless” agreement was required for each submittal. In February of 2016, SDCLT submitted the necessary permit applications achieving the third milestone.

Attachment A

The fourth milestone—securing building and site improvement permits and securing approval as to form of the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was to be achieved by May 19, 2016; but is now extended to April 19, 2017. This requires that all permits applied for in the third milestone are secured (permits issued and improvements secured either through a bond or cash deposit). At this time, SDCLT recently submitted their first resubmittal since February 2016 and corrections from the City are either in review or have been provided to the applicant. City staff estimates all of the needed engineering and building permits in the fourth milestone should be able to be issued and secured within three to six months assuming corrections are addressed. City staff recommends that a third six month extension to the Option Agreement be provided in order to allow SDCLT sufficient time to secure the permits.

SDCLT has submitted a draft ground lease for City review and staff is working with SDCLT on an affordable housing regulatory agreement. The City provided feedback to SDCLT in June 2016 that the draft lease must: 1) eliminate provisions that would allow the units to revert to market rate housing in the event of a leasehold mortgage foreclosure, which would eliminate affordable housing restrictions; and 2) that provisions must be added to the lease that restrict the lease payments of the moderate income households (lessees) to be consistent with state law (mortgage payments and related housing costs shall be equal to or less than 35 percent of the gross monthly household income). Similar concerns have been expressed in the draft regulatory agreement. The issues in both documents remain outstanding, but methods to narrow the issues are being explored. A draft of the affordability agreements, regulatory agreement and the 99-year ground lease will be mutually agreed upon by City staff and SDCLT before it is submitted to City Council for consideration and approval at a future meeting.

Should the City Council decide to take no action providing for no amendment to the Option Agreement, then the Option Agreement will terminate on April 19, 2017 since the second and fourth milestones would not have been achieved and, thereafter, the developer would need to renegotiate a new option agreement with the City should they continue to pursue the project. The City Council may pursue other opportunities for the property if this option agreement terminates.

Conclusion:

City staff recommends that the City Council adopt a resolution amending the Option Agreement to provide a third time extension].

Attachment B

RESOLUTION NO. [2017-_____]

RESOLUTION OF THE [CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA] [APPROVING AN AMENDMENT TO AN OPTION AGREEMENT WITH THE SAN DIEGO COMMUNITY LAND TRUST FOR THE PARCEL IDENTIFIED AS 8084 LEMON GROVE WAY (APN 475-450-19-00)]

WHEREAS, on June 20, 2006 and June 19, 2007, the former Lemon Grove Community Development Agency and a developer entered into loan agreements for the development of nine townhome units at 8084 Lemon Grove Way; and

WHEREAS, said developer defaulted on the loan agreements, resulting in the parcel identified as 8084 Lemon Grove Way becoming property of the City of Lemon Grove; and

WHEREAS, in 2014, the San Diego Community Land Trust provided a formal offer to purchase 8084 Lemon Grove Way from the City of Lemon Grove; and

WHEREAS, the San Diego Community Land Trust's offer included a commitment to develop and construct a minimum of nine affordable housing units to be ground leased for a 99-year period to households earning from 80 percent to 120 percent of the San Diego Area Median Income at the time of sale or resale; and

WHEREAS, the provision of these affordable units helps meet the City's moderate housing targets established by the Regional Housing Needs Assessment (January 1, 2013 – December 31, 2020); and

WHEREAS, on June 17, 2014, the City Council directed City staff to negotiate purchase agreements with the San Diego Community Land Trust, based on its offer; and

WHEREAS, on September 16, 2014, the City Council approved an Option Agreement and a Real Estate Purchase and Sale Agreement between the City of Lemon Grove and the San Diego Community Land Trust; and

WHEREAS, on May 17, 2016, the City Council approved an amendment to the Option Agreement with the San Diego Community Land Trust extending the expiration date of milestone 7.4 to October 19, 2016 and the option term to March 22, 2017 (both six month extensions) and including an Optionee requirement to execute an Affordable Housing Agreement and Regulatory Agreement and a Notice of Affordability Restrictions on Transfer of Property; and

WHEREAS, the City has negotiated a second amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to April 19, 2017 and the option term to September 22, 2017 (both six month extensions); and

WHEREAS, the City has negotiated a third amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to October 19, 2017 and the option term to March 22, 2018 (both six month extensions) and requiring milestone 7.2 – secure construction financing – to be completed by July 19, 2017; and

WHEREAS, the City Council has reviewed said amendment; and

WHEREAS, the City Council finds it in the best interest of the City of Lemon Grove to approve said amendment; and]

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves a Third Amendment to the Option Agreement (Exhibit 1) between the City of Lemon Grove and the San Diego Community Land Trust; and

Attachment B

2. Authorizes the City Manager to execute said Amendment and related documents subject to minor modifications. The draft 99-year ground lease and regulatory agreement will be provided to City Council for consideration and approval.]

/////

Attachment B

EXHIBIT 1

THIRD AMENDMENT TO OPTION AGREEMENT

This Third Amendment to Option Agreement (“**Third Amendment**”) is entered into as of April ____, 2017, by and between and between THE CITY OF LEMON GROVE a public body (“**Optionor**”) and THE SAN DIEGO COMMUNITY LAND TRUST a California 501(c)(3) non-profit organization (“**Optionee**”),

RECITALS:

A. Optionor and Optionee entered into that certain Option Agreement dated September 22, 2014 relating the Property commonly known as 8084 Lemon Gove Way, Lemon Grove, CA (APN475-450-19-00), as amended by the First Amendment dated March 18, 2016 and as amended by the Second Amendment dated October 5, 2016 (together the “**Option Agreement**”).

B. Optionor and Optionee desire to further amend the Option Agreement set forth herein. All initially capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Option Agreement.

AGREEMENT:

1. Extension of Option Term. Paragraph 4 of the Option Agreement is deleted in its entirety and replaced as follows:

“4. Option Term. The Option may be exercised upon the Effective Date and no later than March 22, 2018 (the “**Option Term**”), unless terminated earlier under the terms of Section 6. If the Option is not exercised in accordance with the provisions and conditions hereof during the Option Term, then the Option shall expire and the parties shall have no further obligations under this Agreement with the exception of any surviving indemnification obligations as provided in this Agreement.”

2. Extension of deadline to Secure Construction Financing. Subparagraph 7.2 of the Option Agreement is deleted in its entirety and replaced as follows:

“7.2 No later than September 2, 2015, Optionee to complete project modification and secure entitlement (including approval of a Tentative Subdivision Map and Planned Development Permit in conformance with City of Lemon Grove Resolutions 2694 (attached as Exhibit E) and 2695, as approved by Lemon Grove City Council on February 20, 2017 (attached as Exhibit F). No later than July 19, 2017, Optionee shall present reasonable evidence, as determined in the reasonable discretion of Optionor, that Optionee has secured construction financing.”

3. Extension of deadline for Permits and Optionor’s Approval. Subparagraph 7.4 of the Option Agreement is deleted in its entirety and replaced as follows:

“7.4 No later than October 19, 2017: (a) Optionee shall have (i) secured Building and Site Improvement Permits (including building, street improvement, and grading plans shall be issued and the final map shall be recorded), (ii) secured Optionor’s approval as to form of the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests; and (b) Optionor shall have approved and prepared for recording on the Closing Date as defined in the Purchase agreement in the records of San Diego County, an Affordable Housing

Attachment B

Agreement and Regulatory Agreement and a Notice of Affordability Restrictions on Transfer of Property (together "Regulatory Agreement"). Optionor and Optionee agree that recordation of said Regulatory Agreement shall be deemed a condition of City's (Optionor's) obligation to transfer the Property to the Developer ("Optionee") under the Purchase Agreement and the Purchase Agreement shall be amended to include said condition prior to execution."

4. Counterparts. This Third Amendment may be signed in multiple counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event this Third Amendment is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one Third Amendment.

5. Effect of Third Amendment. Except as amended hereby, the Option Agreement remains in full force and effect.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Third Amendment as of the date set forth above.

OPTIONOR:

THE CITY OF LEMON GROVE.,

By: _____

Name: _____

Its: _____

Approved as to legal form:

By _____
James P. Lough, City Attorney

OPTIONEE:

THE SAN DIEGO COMMUNITY LAND TRUST,

By: _____

Name: _____

Its: _____



Board of Directors March 23, 2017

Richard Lawrence

Chair

Charles Davis

President

Damon Braden

Vice President

Sochiata Vutthy

Secretary

Tom Scott

CFO

David B. De Vries, AICP

Development Services Director

City of Lemon Grove

Development Services Department

3232 Main St.

Lemon Grove, CA 91945

RE: Request for Option Extension – 8084 Lemon Grove Way

Thomas Cartwright

Elaine Kennedy

Lee Van Ham

Dear David:

The Option Agreement between the City of Lemon Grove and the San Diego Community Land Trust (SDCLT) requires that no later than April 19, 2017 SDCLT has secured building permits and secured the City's approval of the form of ground lease and Regulatory Agreement.

Advisory Committee

Malin Burnham, Chair

Charles Black

Gina Champion-Cain

Wendell French

Robert Ito

Vince Kasperick

Tom Lemmon

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Arnulfo Manriquez

David Mulvaney

Sue Reynolds

Susan Riggs

Debbie Ruane

Barry Schultz

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David Weiland

As you are aware SDCLT has worked diligently with Helix Water, the Fire Marshall, City staff and the City's storm water consultant to find an acceptable solution to the storm water regulations applied to this infill site. Given the severe site constraints it has proven difficult to arrive at an acceptable solution. We have, however, finally found a solution that preserves the 9 units covered by the Tentative Map and revised plans reflecting comments from the initial plan review and the solution to the storm water regulations were submitted earlier this month.

In addition, negotiations regarding the Regulatory Agreement and final approving resolutions are continuing. Due to the unexpected length of the delays, the construction loan approval needs to be updated based on the new plans and updated construction costs.

This has been a problem site for the City for some time, and affordable homeownership opportunities in Lemon Grove have been a significant challenge. We are excited about this project that will provide 9 quality new 3-bedroom ownership homes that will be affordable for moderate income working families in Lemon Grove.

Executive Director

Jean Diaz

We therefore request a 6-month extension to the Option Agreement to allow us to complete the City's plan review process, complete the construction loan approval process and conclude our negotiations regarding the Regulatory Agreement and approving resolution. The delays the project has incurred have had a negative impact on the economics of the transaction and it is important to limit any further delays. We hope that the Regulatory Agreement and final approving resolution can be finalized in the very near future so that we can break ground as soon as plans are approved and the construction loan update has been completed.

All the best,

A handwritten signature in black ink, appearing to read "JD", is written over the typed name "Executive Director".

Executive Director